



September 9, 2019

Mr. Jose "Eddie" Saenz                      Via E-Mail: pperez@aguasud.com  
AGUA Special Utility District      Via E-Mail: generalmanager@aguasud.com  
3120 N Abram Rd.  
Palmview, TX 78572

RE: Notice to Cure Deficiencies dated September 6, 2019  
Palmview Wastewater Collection System (Phase-I, Group- A&G)  
EDAP Contract No. G16000

Dear Mr. Saenz,

I am in receipt of your written notice dated September 6, 2019. This correspondence is to address the specific items listed in your letter (a. thru f.) To date, your September 6, 2019 letter is the first official response in months from Agua SUD ("Owner") regarding O.G. Construction's ("O.G.") notices of claims regarding non-payment for services rendered. Lack of payment notwithstanding, the intent of this letter is to negotiate in good faith the remediation of the recently alleged deficiencies related to O.G.'s work.

On August 22, 2019, Owner and O.G. had an Alternative Dispute Resolution Meeting at Senator Juan "Chuy" Hinojosa's office, in which President Loya was present. In that meeting, most of the items addressed in your letter were discussed, none of which have been rejected, denied, or resolved. As discussed, all parties agreed to jointly inspect the claims of work deficiencies and agreed to go to mediation for the claims that had been asserted and/or left unanswered by the Owner and/or Engineer.

Mr. Frank Garza, legal counsel for the Owner, agreed to provide a written response to all claims and provide a date for mediation. The response, however, was provided by Mr. Eddie Saenz. In the response, Owner refused to mediate the claims and continues to rely on inspections that O.G. was not notified of or present for. Even so, O.G. is willing to move forward with remediation, given the very little amount of overall work left on this contract. In that regard, please consider the following:

a. **Change Order No. 4:**

**Response:** This Change Order has not been executed because it did not include a final reconciliation of quantities. O.G. cannot execute an incomplete change order. The work items you are attempting to delete are not as significant as the items that are required to be added and accounted for. I have informed S&BI of this on numerous occasions, but no response was provided. The contract allows for a simple field directive to delete or add items. In such case, this is the appropriate method to reconcile quantities. O.G. Construction once again formally requests that Owner directs S&BI to reconcile project quantities. The overages on bid items and deductions is significant enough to give someone (such as the Board) the false impression of incompleteness of work. This is a critical part of the contract and should be completed in the most expeditious manner possible to avoid further delay of Change Order No. 4. (See **Exhibit "A" May 7, 2019** - Email from O.G. Construction to Owner's Representative explaining the issue)

b. **Sanitary Sewer Line G7-a:**

**Response:** We responded in our letter dated August 1, 2019 (See below). As we explained in our written correspondence, the improvements were slightly off due to an existing block wall in the adjacent property. This made it impossible to work without tearing down or otherwise potentially destroying the wall. Under the supervision of S&BI, these improvements were installed. It was brought to our attention after completion that the manholes were slightly outside of the easement. Notification of this condition was received on July 8, 2019. We immediately informed our engineer to provide information. After review by our engineer, it was confirmed that the manholes were not entirely inside the easement. Under the supervision and direction of S&BI, we proceeded to relocate the sewer line inside the easement without any further delays. A Stop Work Order was issued by Owner after the correction was completed. The line remains inside the easement, as evidenced by the survey provided to S&BI of the "As-Built" condition. The plan is signed and sealed by a registered professional engineer. O.G. Construction's response is attached (See **Exhibit "B"**), and a copy of the letter is pasted below:

August 1, 2019

Mr. Jose "Eddie" Seenz      Via E-Mail: pperez@aguasud.com  
AGUA Special Utility District      Via E-Mail: generalmanager@aguasud.com  
3120 N Abram Rd.  
Palmview, TX 78372

RE: Sewer Line G7-a  
Palmview Wastewater Collection System (Phase-I, Group- A&G)  
EDAP Contract No. G16000

Dear Mr. Seenz,

I am in receipt of your written notice dated August 1, 2019. This correspondence is to inform you that we were following orders demanded by your owner's representative Mr. Reddy Kajuluri (S&B Infrastructure, Ltd.) in a letter dated July 8, 2019. I am sorry that Mr. Kajuluri did not inform you that we had commenced the corrective action demanded of us. Following the ordinary course of business we have completed the work that was demanded from us as per the directive below and attached to this letter today August 1, 2019.

"We request your immediate attention to relocate the sewer line inside the easement without any further delays. If OG fails to address the defective section of the sewer line within a reasonable time, Agua SUD may correct defective work at OG's expense. The land owner is planning improvements on his property and the schedule for the relocation of this sewer line is critical."

Sincerely,

  
Omar F. Garcia

c. **Failed to acknowledge project deficiencies.**

**O.G. Construction's response:** This is false. O.G. Construction's same-day written response is attached below:

August 12, 2019

Mr. Reddy Kajuluri  
Project Engineer  
S&B Infrastructure, Ltd.  
3408 North 10<sup>th</sup> Street  
McAllen, Texas 78504

RE: Sewer Line Work Deficiencies - Agua SUD's Palmview Wastewater  
Collection System (Phase-I, Group- A&G)  
EDAP Contract No. G16000

Dear Mr. Kajuluri:

In response to your letter dated August 12, 2019 I offer the following comments. O.G. Construction has fully complied with the testing obligations provided for in our agreement with the owner. We currently have a situation where a third party has trespassed onto our work site and/or has failed to comply with the terms of our agreement with Agua SUD. Unfortunately, this conduct has resulted in the interference with our contract and has resulted in damages to our work. The damages are not limited to the trespasses but the deliberate actions to damage our previously inspected and accepted work. You are aware of the fact that S&B Infrastructure has performed the inspections and tests outlined in our agreement because S&B employee Gabriel Salinas performed the required inspections. I have attached those inspection reports for your convenience. I will review the information you provided, however any further aid to the trespasser or the further conduct in an effort to interfere in our contract may result in future liability on the part of S&B.

Sincerely,

  
Omar F. Garcia

As we explained in our August 22, 2019 meeting, O.G. itself televised these lines, and none of the deficiencies asserted were present (See **Exhibit "F"**). The full video is available for you to review, which shows that the alleged defects were not present. At the ADR meeting all parties agreed to be present during all future televising and that the previous televising could not substantiate deficiencies of O.G.'s work given what our footage depicts. We also explained to you that all work contains a one-year warranty and the deficiencies noted were not of concern because they could all be easily corrected.

In order to get this done, I am requesting that the Engineer and anyone else that you feel necessary be present meet with us at the location specified in your deficiency notice, so that we can review the video and actually locate these deficiencies. I am available anytime, but this needs to be done as soon as possible in light of the letter to cure. (See **Exhibit "C" & "F"**)

d. **Contractor repeatedly refused to set up an escrow account:**

**Response:** O.G. Construction maintains its assertion that a serious conflict exists between Owner's interests and that of Engineer's, given the way this contract is set up. This raises legal issues that the Board should be very interested in learning about and addressing. This conflict is demonstrated by Engineer's approval/denial of contractor's notices of delays and requests for additional time, which were caused by engineer's failure to provide accurate designs/plans and, of course, the fact that any provision of rain days would preclude the Engineer from charging for additional time beyond the 330 days. We have respectfully requested alternative dispute resolution meetings and mediation on multiple occasions to address this ongoing issue. We have never received a formal response regarding this matter, and we have yet to receive one as of the date of this letter. In any event, excluding liquidated damages, Owner has withheld almost a million dollars in payments for services rendered, which remain outstanding. O.G. is therefore deprived of any funds to operate, much less open an escrow account, the details of which still have not been provided.

e. **Contractor conducted activities outside the previously agreed work schedule:**

**Response:** We are aware of two instances in which we were notified that one of our crews was working after hours. We immediately responded and let everyone know that our contract allows for this when an emergency is at hand. In this specific case, O.G. had an open excavation on the frontage road of the expressway. The crew was instructed to complete their task and not to leave the excavation open, due to

concerns of public safety. The second written notice was received in response to the crew waiting for concrete to dry before leaving for the day. This is standard practice in our industry, it requires no work, only observation. Furthermore, waiting for concrete to dry does not require any inspection listed in our project specifications. Nonetheless, as agreed previously, O.G. will only work outside the agreed schedule after notice is given to Owner.

On September 7, 2019, this last Saturday, we had a crew working. Last Monday, September 2, 2019, during our morning meeting, we notified the Owner that due to rainfall we would be working the weekend.

f. **S&B understands that contractor has denied any responsibility for corrective actions:**

**Response:** As we explained in our August 22, 2019 meeting, we televised these lines after receipt of the letter and had a difficult time locating deficiencies (**Exhibit "F"**), hence the need to conduct this type of inspection at a mutually agreeable time. At that meeting, we all agreed to be present during the televising of the lines, as allowed by the Contract. O.G. also explained that all work provided has a one-year warranty and the deficiencies noted (if it exists) could be easily corrected. Please accept this as O.G. Please see refer to section G. above wherein we request a date this week to meet on site to pinpoint these deficiencies.

The items listed above can be completed within the time frame. To that end, O.G. needs the following:

1. A meeting with Owner and O.G. Construction's team no later than Tuesday September 10<sup>th</sup>;
2. Five full days to perform on-site inspections on all lines that are asserted as "defective and/or requiring corrective action."; and
3. Certificates of substantial completion provided after the lines are tested and corrected.

As you know, the last application for payment shows this project to be 98% complete as of August 15, 2019. However, as of today, O.G. has not been paid \$969,007.01, which excludes retainage and liquidated damages. Thus, O.G. is working without pay, but we are determined to see completion of this project.

If we cannot resolve these other minor issues, the residents of the area will only be given further delay and inconvenience, rather than a finished project. We find it frustrating that, after months of written notice letters and written requests for mediation/meetings and non-payment, Owner/Owner's Representative chooses to make its only written response a notice of potential termination. This is frankly shocking in light of how little is left on this contract and O.G.'s continued work, even without payment.

We are resolved to complete this job and fix these issues. We look forward to reaching an amicable resolution. Thank you for your consideration of this letter. If you have any additional questions or concerns, please contact us.

Respectfully,



Omar F. Garcia,  
Managing Member  
O.G. Construction Co., LLC  
Cc: Reddy Kajuluri, SB&I

VIA EMAIL: [vrkajuluri@sbinfra.com](mailto:vrkajuluri@sbinfra.com)